IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9778 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAVANJI JUHAJI THAKOR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9778 of 2000

MRS DT SHAH for Petitioner No. 1

MS ROHINI ACHARYA, AGP for Respondent No. 1

RULE SERVED for Respondents No. 2-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 06/10/2001

ORAL JUDGEMENT

1. Rule. Service of Rule is waived by ld. AGP Ms. Acharya for the respondents. At the request of ld.

counsel appearing for the parties, the matter is finally heard and is disposed of today.

2. In this petition under Article 226 of the Constitution, the petitioner has prayed for appropriate writ, order or direction to the effect that the impugned order dated 31.8.1999 (Annex.D) should be quashed and set aside and respondents should be directed to grant pension to the petitioner from 1.1.1991 with all other conseqential benefits including arrears amount with interest at the rate of 18%.

3. I have seen earlier order passed by this Court (Coram : J.N.Bhatt,J) on 8.7.1999 while dealing with Spl.Civil Application No. 5938/91 whereby the respondents were directed to consider and decide the claim made by the petitioner within 8 weeks.

4. The grievance of the petitioner is that though the representation was made by the petitoner to the respondents, the respondents failed to consider the case of the petitioner in proper perspective and rejected the same vide impugned order. The petitioner had also made an attempt to get the decision reviewed vide application dated 28.2.2000, but respondent no.3 had not given reply to the request to review the decision rejecting the claim of the petitioner.

5. The petitioner was employed by respondent no.2 as Daily Wager in the year 1965-66 and thereafter he was also appointed as Work Charge Employee by the order dated 19.2.1983. The petitioner retired on attaining the age of superannuation on 31.12.1990. It is submitted by the petitioner that though he is entitled to pensionary benefits as per the Government Policy laid down vide Govt. Resolution Nos. WCE-1588(5)/(3)/G-2 dated 17.10.1988 and No.FAS/5575/(45) dated 6.7.1990.

6. I have considered the stand taken by the respondent State in the affidavit-in-reply. The say of the respondent State, in short, is that the period of service of the petitioner is only of 7 years & 10 months and as the per the rules stipulated in BCSR with regard to the work charge employees and the petitioner is required to complete 10 years of qualifying service and as the petitioner has not completed the same, on the date of retirement, the petitioner was not found entitled to pensionary benefits and, therefore, his request was not accepted. Affidavit-in-reply filed by respondent no.3 is also on similar line. Rejoinder affidavit (page 24) and further affidavit-in-rejoinder (page 28) also reveal

the similar stand.

7. This court has appreciated the simliar type of issue in number of deisions. One such decision of this Court is in the case of Ganguben, wd/o deceased Chimanbhai Jadav v/s State of Gujarat (Coram: C.K. Buch,J) in Spl.C.A. No. 2265/2001 dated 27.8.2001. Decision iof this Court pronounced today i.e. 6.10.2001 in Spl.C.A. No. 502/2001 also would help the present petitioner. In response to the query raised by the Court, ld. AGP Ms. Acharya has accepted that the facts of this case are similar to the facts of the aforesaid decision. It has been rightly submitted by Mrs. Shah that ratio propounded by this Court (Coram : K.R.Vyas,J) in the case of Karshanbhai Vastabhai Bhasker v/s State of Gujarat & Anr. reported in 1999(1) GCD 638 (Guj) would also squarely apply to the facts of the present case and hence the petitoner is entitled to the pensionary benefits. I am in agreeemnt with the submission of ld. counsel Mrs. Shah for the petitioner and applying the ratio propounded in the case of Karshanbhai (supra) and adopting the reasons assigned in the aforesaid decision, I am inclined to allow thispetition.

8. For the reasons aforesaid, petition is allowed. The impugned order dated 31.8.1999 (Annex.D) passed by respondent no.2 herein, is hereby quashed and set aside. Respondents are directed to compute and pay the pension to the petitioner Javanji Juhaji Thakore as per the Pension Scheme considering the services of the petitioner rendered by him as a Daily Wager - Work Charge Employee from the date of his retirement i.e. 1.1.1991 with arrears & with interest at the rate of 12% p.a. as per rules & regulations on such amount, at the earliest and preferably within 4 (four) months from today and shall continue to pay pension to the petitioner regularly. It would be open for the Respondents to clear up arrears with interest within 12 (twelve) months from the date of grant of pensionary benefit to the petitoner.

9. Rule is made absolute accordingly. No order as to costs.

6.10.2001 [C.K. BUCH, J]
*rawal